

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

Selene Finance, LP

Plaintiff

vs.

Debra J. Kearney and Edward Kearney

Defendants

Citibank (South Dakota) N.A.

Party-In-Interest

CIVIL ACTION NO:

COMPLAINT

RE:

53 Mount Pleasant Rd., Union, ME 04862

Mortgage:

October 12, 2007

Book 3871, Page 67

NOW COMES the Plaintiff, Selene Finance, LP, by and through its attorneys, Doonan, Graves & Longoria, LLC, and hereby complains against the Defendants, Debra J. Kearney and Edward Kearney, as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant 28 U.S.C. § 1332(a)(1) (Diversity) because the Plaintiff and Defendants are citizens of different states and the matter in controversy exceeds the sum or value of seventy-five thousand and 00/100 (\$75,000.00) dollars, exclusive of interest and costs. Any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought under 28 U.S.C. § 2201.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the object of this litigation is a Note executed under seal currently owned and held by Selene Finance, LP, in which the Defendants, Debra J. Kearney and Edward Kearney, are the obligor and the total amount owed under the terms of the Note is One Hundred Thirty-

Four Thousand Seven-Hundred Ninety Two and 00/100 (\$134,792.00) Dollars, plus attorney fees and costs associated with the instant action; thus, the amount in controversy exceeds the jurisdictional threshold of seventy-five thousand (\$75,000.00) dollars.

3. Venue is properly exercised pursuant to 28 U.S.C. §1391(b)(2) insofar as all or a substantial portion of the events that give rise to the Plaintiff's claims transpired in Maine and the property is located in Maine.

PARTIES

4. Selene Finance, LP is a corporation with its principal place of business located at 9990 Richmond Avenue, Suite 400 South, Houston, TX 77042.
5. The Defendant, Debra J. Kearney, is a resident of Union, County of Knox and State of Maine.
6. The Defendant, Edward Kearney, is a resident of Union, County of Knox and State of Maine.
7. The Party-in-Interest, Citibank (South Dakota) N.A., is located at 701 East 60th Street, North, Sioux Falls, SD 57104.

FACTS

8. On October 12, 2007, by virtue of a Quitclaim Deed with Covenant from Edward Kearney, which is recorded in the Knox County Registry of Deeds in **Book 3871, Page 66**, the property situated at 53 Mount Pleasant Rd, Union, County of Knox, and State of Maine, was conveyed to the Defendants, Debra J. Kearney and Edward Kearney, being more particularly described by the attached legal description. *See* Exhibit A (a true and correct copy of the legal description is attached hereto and incorporated herein).

9. On October 12, 2007, the Defendants, Debra J. Kearney and Edward Kearney, executed and delivered to Taylor, Bean & Whitaker Mortgage Corp. a certain Note in the amount of \$134,792.00. *See* Exhibit B (a true and correct copy of the Note is attached hereto and incorporated herein).
10. To secure said Note, on October 12, 2007, the Defendants executed a Mortgage Deed in favor of Mortgage Electronic Registration Systems, Inc. as nominee for Taylor, Bean & Whitaker Mortgage Corp., securing the property located at 53 Mount Pleasant Rd, Union, ME 04862 which Mortgage Deed is recorded in the Knox County Registry of Deeds in **Book 3871, Page 67**. *See* Exhibit C (a true and correct copy of the Mortgage is attached hereto and incorporated herein).
11. The Mortgage was then assigned to Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP by virtue of an Assignment of Mortgage dated April 11, 2012 and recorded in the Knox County Registry of Deeds in **Book 4506, Page 17**. *See* Exhibit D (a true and correct copy of the Assignment of Mortgage is attached hereto and incorporated herein).
12. The Mortgage was then assigned to Selene Finance, LP by virtue of an Assignment of Mortgage dated November 6, 2014 and recorded in the Knox County Registry of Deeds in **Book 5090, Page 200**. *See* Exhibit E (a true and correct copy of the Assignment of Mortgage is attached hereto and incorporated herein).
13. The Mortgage was further assigned to Selene Finance, LP by virtue of a Quitclaim Assignment dated May 31, 2017 and recorded in the Knox County Registry of Deeds in **Book 5173, Page 21**. *See* Exhibit F (a true and correct copy of the Quitclaim Assignment is attached hereto and incorporated herein).

14. On June 26, 2019, the Defendants, Debra J. Kearney and Edward Kearney, were sent a Notice of Mortgagor's Right to Cure, as evidenced by the Certificate of Mailing (herein after referred to as the "Demand Letter"). *See* Exhibit G (a true and correct copy of the Demand Letter is attached hereto and incorporated herein).
15. The Demand Letter informed the Defendants, Debra J. Kearney and Edward Kearney, of the payment due date, the total amount necessary to cure the default, and the deadline by which the default must be cured, which was thirty-five (35) days from receipt of the Demand Letter. *See* Exhibit G.
16. The Defendants, Debra J. Kearney and Edward Kearney, failed to cure the default prior to the expiration of the Demand Letter.
17. The Plaintiff, Selene Finance, LP, is the present holder of the Note pursuant to endorsement by the previous holder (if applicable), payment of value and physical possession of the Note in conformity with 11 M.R.S. § 3-1201, et seq., 10 M.R.S. § 9416, and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929).
18. The Plaintiff, Selene Finance, LP, is the lawful holder and owner of the Note and Mortgage.
19. The Plaintiff, Selene Finance, LP, hereby certifies that all steps mandated by law to provide notice to the mortgagor pursuant to 14 M.R.S.A. § 6111 were strictly performed.
20. Citibank (South Dakota) N.A. is a Party-in-Interest pursuant to a Writ of Execution/Mortgage/Tax Lien/Notice of State Lien in the amount of \$3,177.06 dated June 7, 2010, and recorded in the Knox County Registry of Deeds in **Book 4262, Page 270** and is in second position behind Plaintiff's Mortgage.
21. The total debt owed under the Note and Mortgage as of October 1, 2019 is One Hundred Twenty-Four Thousand Seven Hundred Forty-Two and 34/100 (\$124,742.34) Dollars, which includes:

| Description | Amount |
|-------------------|--------------|
| Principal Balance | \$111,554.66 |
| Interest | \$9,761.10 |
| Escrow Advance | \$3,115.47 |
| Corporate Advance | \$265.30 |
| Pending MI | \$45.81 |
| Grand Total | \$124,742.34 |

22. Upon information and belief, the Defendants, Debra J. Kearney and Edward Kearney, are presently in possession of the subject property originally secured by the Mortgage.

COUNT I – FORECLOSURE

23. The Plaintiff, Selene Finance, LP, repeats and re-alleges paragraphs 1 through 22 as if fully set forth herein.

24. This is an action for foreclosure respecting a real estate related Mortgage and title located at 53 Mount Pleasant, Union, County of Knox, and State of Maine. *See* Exhibit A.

25. The Plaintiff, Selene Finance, LP, is the holder of the Note referenced in Paragraph 9 pursuant to endorsement by the previous holder (if applicable) and physical possession of the aforesaid Note in conformity with Title 11, section 3-1201, et seq. of the Maine Revised Statutes and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929). As such, Plaintiff, Selene Finance, LP, has the right to foreclosure upon the subject property.

26. The Plaintiff, Selene Finance, LP, is the current owner and investor of the aforesaid Mortgage and Note.

27. The Defendants, Debra J. Kearney and Edward Kearney, are presently in default on said Mortgage and Note, having failed to make the monthly payment due August 1, 2018, and all subsequent payments, and, therefore, have breached the condition of the aforesaid Mortgage and Note.

28. The total debt owed under the Note and Mortgage as of October 1, 2019 is One Hundred Twenty-Four Thousand Seven Hundred Forty-Two and 34/100 (\$124,742.34) Dollars, which includes:

| Description | Amount |
|-------------------|--------------|
| Principal Balance | \$111,554.66 |
| Interest | \$9,761.10 |
| Escrow Advance | \$3,115.47 |
| Corporate Advance | \$265.30 |
| Pending MI | \$45.81 |
| Grand Total | \$124,742.34 |

29. The record established through the Knox County Registry of Deeds indicates that there are no public utility easements recorded subsequent to the Mortgage and prior to the commencement of these proceedings affecting the mortgaged premises at issue herein.

30. By virtue of the Defendants' breach of condition, the Plaintiff hereby demands a foreclosure on said real estate.

31. Notice in conformity with 14 M.R.S.A. §6111 was sent to the Defendants, Debra J. Kearney and Edward Kearney, on June 26, 2019, evidenced by the Certificate of Mailing. *See* Exhibit G.

32. The Defendants, Debra J. Kearney and Edward Kearney, are not in the Military as evidenced by the attached Exhibit H.

COUNT II – BREACH OF NOTE

33. The Plaintiff, Selene Finance, LP, repeats and re-alleges paragraphs 1 through ___ as if fully set forth herein.

34. On October 12, 2007, the Defendants, Debra J. Kearney and Edward Kearney, executed and delivered to Taylor, Bean & Whitaker Mortgage Corp. a certain Note in the amount of \$134,792.00. *See* Exhibit B.
35. The Defendants, Debra J. Kearney and Edward Kearney, are in default for failure to properly tender the August 1, 2018 payment and all subsequent payments. *See* Exhibit G.
36. The Plaintiff, Selene Finance, LP, is the proper holder of the Note and is entitled to enforce the terms and conditions of the Note due to its breach by the Defendants, Debra J. Kearney and Edward Kearney.
37. The Defendants, Debra J. Kearney and Edward Kearney, having failed to comply with the terms of the Note and Mortgage, are in breach of both the Note and the Mortgage.
38. The Defendants Debra J. Kearney and Edward Kearney's breach is knowing, willful, and continuing.
39. The Defendants Debra J. Kearney and Edward Kearney's breach has caused Plaintiff Selene Finance, LP to suffer actual damages, including, but not limited to money lent, interest, expectancy damages, as well as attorney's fees and costs.
40. The total debt owed under the Note and Mortgage as of October 1, 2019, if no payments are made, is One Hundred Twenty-Four Thousand Seven Hundred Forty-Two and 34/100 (\$124,742.34) Dollars, which includes:

| Description | Amount |
|-------------------|--------------|
| Principal Balance | \$111,554.66 |
| Interest | \$9,761.10 |
| Escrow Advance | \$3,115.47 |
| Corporate Advance | \$265.30 |
| Pending MI | \$45.81 |
| Grand Total | \$124,742.34 |

41. Injustice can only be avoided by awarding damages for the total amount owed under the Note including interest, plus costs and expenses, including attorney fees.

COUNT III – BREACH OF CONTRACT, MONEY HAD AND RECEIVED

42. The Plaintiff, Selene Finance, LP, repeats and re-alleges paragraphs 1 through 41 as if fully set forth herein.

43. By executing, under seal, and delivering the Note, the Defendants, Debra J. Kearney and Edward Kearney, entered into a written contract with Taylor, Bean & Whitaker Mortgage Corp. who agreed to loan the amount of \$134,792.00 to the Defendants. *See* Exhibit B.

44. As part of this contract and transaction, the Defendants, Debra J. Kearney and Edward Kearney, executed the Mortgage to secure the Note and the subject property. *See* Exhibit C.

45. The Plaintiff, Selene Finance, LP, is the proper holder of the Note and successor-in-interest to Taylor, Bean & Whitaker Mortgage Corp., and has performed its obligations under the Note and Mortgage.

46. The Defendants, Debra J. Kearney and Edward Kearney, breached the terms of the Note and Mortgage by failing to properly tender the August 1, 2018 payment and all subsequent payments. *See* Exhibit G.

47. The Plaintiff, Selene Finance, LP, is the proper holder of the Note, and is entitled to enforce the terms and conditions of the Note due to its breach by the Defendants, Debra J. Kearney and Edward Kearney.

48. The Defendants, Debra J. Kearney and Edward Kearney, having failed to comply with the terms of the Note and Mortgage, are in breach of contract.

49. The Defendants, Debra J. Kearney and Edward Kearney, are indebted to Selene Finance, LP in the sum of One Hundred Twenty-Four Thousand Seven Hundred Forty-Two and 34/100 (\$124,742.34) Dollars, for money lent by the Plaintiff, Selene Finance, LP, to the Defendants.

50. Defendants Debra J. Kearney and Edward Kearney's breach is knowing, willful, and continuing.

51. Defendants Debra J. Kearney and Edward Kearney's breach has caused Plaintiff, Selene Finance, LP, to suffer actual damages, including, but not limited to money lent, interest, expectancy damages, as well as attorney's fees and costs.

52. The total debt owed under the Note and Mortgage as of October 1, 2019, if no payments are made, is One Hundred Twenty-Four Thousand Seven Hundred Forty-Two and 34/100 (\$124,742.34) Dollars, which includes:

| Description | Amount |
|-------------------|--------------|
| Principal Balance | \$111,554.66 |
| Interest | \$9,761.10 |
| Escrow Advance | \$3,115.47 |
| Corporate Advance | \$265.30 |
| Pending MI | \$45.81 |
| Grand Total | \$124,742.34 |

53. Injustice can only be avoided by awarding damages for the total amount owed under the Note and Mortgage, and for money had and received, including interest, plus costs and expenses, including attorney fees.

COUNT IV – QUANTUM MERUIT

54. The Plaintiff, Selene Finance, LP, repeats and re-alleges paragraphs 1 through 53 as if fully set forth herein.

55. Taylor, Bean & Whitaker Mortgage Corp., predecessor-in-interest to Selene Finance, LP, loaned Defendants, Debra J. Kearney and Edward Kearney, \$134,792.00. *See* Exhibit B.

56. The Defendants, Debra J. Kearney and Edward Kearney, are in default for failure to properly tender the August 1, 2018 payment and all subsequent payments. *See* Exhibit G.

57. As a result of the Defendants Debra J. Kearney and Edward Kearney's failure to perform under the terms of their obligation, the Defendants, should be required to compensate the Plaintiff, Selene Finance, LP.

58. As such, the Plaintiff, Selene Finance, LP, is entitled to relief under the doctrine of *quantum meruit*.

COUNT V –UNJUST ENRICHMENT

59. The Plaintiff, Selene Finance, LP, repeats and re-alleges paragraphs 1 through 58 as if fully set forth herein.

60. Taylor, Bean & Whitaker Mortgage Corp., predecessor-in-interest to Selene Finance, LP, loaned the Defendants, Debra J. Kearney and Edward Kearney, \$134,792.00. *See* Exhibit B.

61. The Defendants, Debra J. Kearney and Edward Kearney, have failed to repay the loan obligation.

62. As a result, the Defendants, Debra J. Kearney and Edward Kearney, have been unjustly enriched to the detriment of the Plaintiff, Selene Finance, LP as successor-in-interest to Taylor, Bean & Whitaker Mortgage Corp. by having received the aforesaid benefits and money and not repaying said benefits and money.

63. As such, the Plaintiff, Selene Finance, LP, is entitled to relief.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff, Selene Finance, LP, prays this Honorable Court:

- a) Issue a judgment of foreclosure in conformity with Title 14 § 6322;
- b) Grant possession to the Plaintiff, Selene Finance, LP, upon the expiration of the period of redemption;
- c) Find that the Defendants, Debra J. Kearney and Edward Kearney, are in breach of the Note by failing to make payment due as of August 1, 2018, and all subsequent payments;

- d) Find that the Defendants, Debra J. Kearney and Edward Kearney, are in breach of the Mortgage by failing to make payment due as of August 1, 2018, and all subsequent payments;
- e) Find that the Defendants, Debra J. Kearney and Edward Kearney, entered into a contract for a sum certain in exchange for a security interest in the subject property;
- f) Find that the Defendants, Debra J. Kearney and Edward Kearney, are in breach of contract by failing to comply with the terms and conditions of the Note and Mortgage by failing to make the payment due August 1, 2018 and all subsequent payments;
- g) Find that the Plaintiff, Selene Finance, LP, is entitled to enforce the terms and conditions of the Note and Mortgage;
- h) Find that by virtue of the money retained by the Defendants, Debra J. Kearney and Edward Kearney have been unjustly enriched at the Plaintiff's expense;
- i) Find that such unjust enrichment entitles the Plaintiff, Selene Finance, LP, to restitution;
- j) Find that the Defendants, Debra J. Kearney and Edward Kearney, are liable to the Plaintiff, Selene Finance, LP, for money had and received;
- k) Find that the Defendants, Debra J. Kearney and Edward Kearney, are liable to the Plaintiff for quantum meruit;
- l) Find that the Defendants, Debra J. Kearney and Edward Kearney, have appreciated and retained the benefit of the Mortgage and the subject property;
- m) Find that it would be inequitable for the Defendants, Debra J. Kearney and Edward Kearney, to continue to appreciate and retain the benefit of the Mortgage, Note and subject property without recompensing the appropriate value;

- n) Find that the Plaintiff, Selene Finance, LP, is entitled to restitution for this benefit from the Defendants, Debra J. Kearney and Edward Kearney;
- o) Determine the amount due on said Mortgage and Note, including principal, interest, reasonable attorney's fees and court costs;
- p) Additionally, issue a money judgment against the Defendants, Debra J. Kearney and Edward Kearney, and in favor of the Plaintiff, Selene Finance, LP, in the amount of One Hundred Twenty-Four Thousand Seven Hundred Forty-Two and 34/100 (\$124,742.34 Dollars, the total debt owed under the Note plus interest and costs including attorney's fees and costs;
- q) For such other and further relief as this Honorable Court deems just and equitable.

Respectfully Submitted,
Selene Finance, LP,
By its attorneys,

Dated: September 5, 2019

/s/ John A. Doonan, Esq.
/s/ Reneau J. Longoria, Esq.
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